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Report to Congressional Requesters

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March 1986

ADP ACQUISITIONS

Immigration and Naturalization Service Should Terminate Its Contract & Recompete

GAO/IMTEC-86-5

GAO

United States
General Accounting Office
Washington, D.C. 20548

Comptroller General
of the United States

B-220280

March 20, 1986

The Honorable Jack Brooks
Chairman, Committee on Government Operations
House of Representatives

The Honorable Neal Smith
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary and
Related Agencies
Committee on Appropriations
House of Representatives

The Honorable Paul Laxalt
Chairman, Subcommittee on Commerce,
Justice, State, the Judiciary and
Related Agencies
Committee on Appropriations
United States Senate

As part of our continuous reviews of federal computer systems, we began a broad-based assessment of the Immigration and Naturalization Service's (INS) management of automated data processing (ADP). Our preliminary work led us to evaluate in detail INS' ongoing, multimillion-dollar computer systems acquisition. We focused on this specific acquisition of systems that largely support district-office casework because of the size and importance to INS. We found that INS (1) violated federal procurement regulations in awarding the contract, (2) pays excessive prices for equipment acquired under this contract, and (3) is acquiring equipment without the clear statement of needs required by the Federal Information Resources Management Regulation.

In 1980 INS began an intensive effort to improve its operations through use of automated technology. In so doing, INS entered into major, long-term contracts to acquire computer hardware and applications software. INS has informed the Congress that, under its contract for hardware acquisition, it plans to install a nationwide network of about 8 mainframe computers, 70 office automation processors, 260 terminal controllers, and 8,500 terminals. INS' Delegation of Procurement Authority

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(DPA),[1] from the General Services Administration (GSA), for this procurement authorizes an expenditure of $64,425,989 over the 8-year life of the contract. However, a current estimate of the total contract price exceeds $100 million.

Detailed information on the procurement, ensuing violations, excessive prices, and lack of a requirements analysis is in appendix I. Appendix II contains details on the objectives, scope, and methodology followed in conducting this evaluation.

INS Violated and Departed From Federal Procurement Regulations

On May 22, 1984, INS awarded a $61.3-million contract to International Business Machines (IBM) Corporation for hardware, systems software, site preparation, and systems integration and operations. We found that INS violated federal procurement regulations and departed from accepted procurement practices in making this award. Specifically, INS:

- Violated procurement regulations by conducting additional negotiations with IBM in a late-night meeting held after receiving best and final offers from IBM and Electronic Data Systems (EDS), the only other offeror. In this meeting, IBM's best and final offer for purchase was reduced by $3.3 million, making it $2,713 lower than EDS' comparable offer.
- Evaluated IBM's offer of a decentralized (distributed) system favorably and effectively downgraded EDS' proposal for a centralized system, even though INS specifically told each offeror, in response to an EDS inquiry, that INS required a centralized system.
- Evaluated the equipment price offers on the basis of lease with option to purchase. However, the contract was awarded to IBM on an installment purchase basis, against which EDS' comparable offer was at least $1.8 million lower than IBM's, even after the changes made during the late-night meeting.
- Violated the terms of its DPA. Nine days after the contract was awarded, IBM offered and INS later accepted changes to the size and configuration of the system on which the award was originally made. These changes increased INS' computing capability fourfold and, by INS' own estimate, increased contract costs to over $11 million more than the amount authorized by the DPA. Terms of the DPA allowed for only a twofold increase in computing capability and a dollar limit of $64.4 million for the total procurement and required INS to obtain an amendment if there

[1]Under the Brooks Act (Public Law 89-306), GSA is responsible for economically and efficiently acquiring and managing computers for federal agencies. GSA may formally delegate this responsibility to the agencies on a case-by-case basis by issuing a DPA, which describes the conditions under which a procurement may be undertaken and the controls the agency must exert.

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were material changes to its requirements. The total contract price now exceeds an estimated $100 million. INS has not obtained an amendment to its DPA.

INS' late-night, post-negotiation meeting with IBM became the focus of a bid protest and litigation by EDS. Ultimately, INS negotiated an out-of-court settlement that required EDS to perform the contract, installing IBM's proposed equipment, not EDS', at the same cost to INS and under the same terms and conditions stated in the IBM contract. These terms have since been changed and the cost of INS' hardware contract has increased substantially.

Excessive Prices

On January 29, 1985, 19 days after a federal judge approved the final, out-of-court settlement, INS modified the EDS contract. This modification, which was not submitted to the judge for consideration in the settlement, allowed EDS to add a fee or "load" (usually between 24 and 29 percent) to the base prices in the contract. The load is designed to cover EDS' general and administrative expenses, cost of money, and profit; its addition is triggered by any changes INS makes to the contract.

Equipment deliverable under the contract is grouped into "lots"; any change to a single unit of equipment or to a delivery date affects the entire lot. Whenever INS changes either a delivery or configuration, EDS reprices each affected lot, adding a load to the entire equipment grouping.

Although this pricing arrangement was neither part of the settlement nor submitted for court review, it was discussed by EDS and INS during the negotiations leading to the settlement and formally entered into shortly thereafter. Furthermore, EDS was able to enter into the agreement having observed that INS had already substantially changed the contract and, according to EDS officials, being secure in the belief that INS would continue to make changes.

In fact, all equipment delivered under the modified EDS contract has been repriced to incorporate the EDS load; changes already made will ensure that all subsequent lots are similarly repriced. As a result, the prices INS paid have, in all instances, exceeded both published IBM list prices and IBM's originally awarded prices by between 9 and 25 percent.

INS' payment of higher-than-list prices contrasts sharply with both commercial and federal practices. Both GSA and the Congress have found

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that computer prices to the government achieved through competition generally average 30 percent below list price. Furthermore, a leading computer trade journal reported recently that both IBM commercial and federal customers have enjoyed significant discounts from IBM's published prices for a number of years. The discounts have ranged from 20 to 50 percent on some of the same equipment INS is acquiring.

ADP Needs Not Clearly Stated

Federal procurement regulations[2] require that the need for data processing resources and any significant alterations to those needs must be supported by a requirements study. Despite changes to the basic assumptions used in obtaining its DPA, INS has not rewritten its long-range ADP plan or performed a requirements study. However, the agency has moved ahead with its hardware acquisition even though a number of its planning documents conflict on (1) how many processing centers are required, (2) how these centers will be configured, and (3) how critical applications will be processed.

Recent Actions

We first presented our facts and concerns to staff from the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Senate Committee on Appropriations, in a September 6, 1985, briefing. We gave our briefing document, which did not include conclusions and recommendations, to the INS Commissioner on September 17 and discussed it with him and his key staff in several meetings between September 19 and November 18. On November 14, INS provided us written comments on our briefing document. We have incorporated those comments, where appropriate, in appendix I.

Throughout these discussions INS maintained that, through price negotiations and additional contract modifications, it could obtain fair and reasonable prices without abandoning the current contract. We disagreed and advised the various participants that, in our opinion, INS could not achieve acceptable hardware costs under the current contract because it would be difficult to change the basic structure for determining price. We also believe that further modifying the current contract would only create a more complex, more administratively cumbersome contract. Accordingly, we urged INS to cease ordering equipment against the current contract, to measure and validate its requirements, and to recompete its computer needs.

[2]Federal Information Resources Management Regulation, § 201-30.007 (Temp. Reg. 8; Dec. 21, 1984).

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INS has renewed its agreement with EDS for fiscal year 1986. While INS promises to study its long-term ADP requirements during 1986, it has ordered additional equipment against the current contract. On December 2, 1985, the Department of Justice informed GSA and us that INS intended to recompete its needs for equipment beyond that currently installed. GSA reported to you that it agreed with the approach. On December 4, 1985, House and Senate conferees to H.R. 2965 (the bill containing INS' fiscal year 1986 appropriation) directed that no funds be used for any ADP procurement, beyond the additional equipment INS had already ordered. They further directed INS to review its ADP modernization program and share the results with us and appropriate committees of the Congress.

Conclusions

INS is eager to move forward with its automation program. However, its current contractual arrangements with EDS and IBM do not serve the best interests of INS, the government as a whole, or the taxpayer. The irregularities in INS' competition, award, and administration of its hardware contract have resulted in INS' acquiring computing capability at excessive prices, without having clearly documented needs. Continuing this price structure for either currently leased or future lots of equipment will dramatically inflate the government's costs over the 8-year life of this contract. This situation should be remedied before INS continues to pursue its automation goals. Accordingly, we do not agree with Justice's and GSA's approach of not explicitly requiring recompetition of all INS computing needs.

Further, we believe INS' violation of federal procurement regulations in awarding the original contract is evidence of inadequate internal controls designed to prevent or mitigate the occurrence of fraud, waste, or abuse. Given the total computer acquisition cost—currently estimated at over $100 million—we believe INS' continuation of this contract and the absence of a clear and documented determination of its computer needs is a material control weakness under the Federal Managers' Financial Integrity Act.

Recommendations to the Congress

To ensure that INS makes no further unwise expenditures for automation, the Congress should make INS' fiscal year 1987 appropriation for computer acquisitions contingent upon the Attorney General's implementing the following recommendations.

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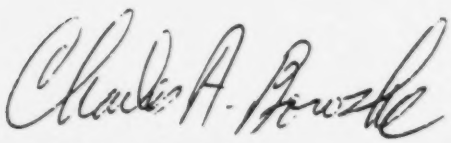
Recommendations to the Attorney General

To ensure that INS' valid computer needs are met expeditiously but at the lowest reasonable cost to the government, we recommend that the Attorney General direct the INS Commissioner to

- reassess, justify, and document INS' current and projected ADP requirements and translate those requirements into a long-range, documented strategy; the reassessment should result in a clarification of INS' equipment needs;
- procure competitively the automation needs outlined by this strategy and terminate its contract with EDS, including that equipment currently under lease; and
- report the ADP procurement as a material control weakness under the Federal Managers' Financial Integrity Act.

We did not obtain agency comments on the conclusions and recommendations in this report. We plan no further distribution of the report until 30 days from its issue date. We will then send copies to the appropriate House and Senate Committees; the Attorney General; the INS Commissioner; the Administrator of General Services; the Director, Office of Management and Budget; other appropriate heads of departments and agencies; and other interested parties.



Charles A. Bowsher
Comptroller General
of the United States

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INS' Hardware Acquisition

On May 22, 1984, INS awarded a $61.3-million contract to IBM for computer hardware, systems software, site preparation, and systems integration and operations. We found that INS (1) violated federal procurement regulations and departed from accepted procurement practices in making this award, (2) is paying excessive prices for equipment under the contract, and (3) is acquiring equipment without the clear statement of needs required by the Federal Information Resources Management Regulation.

INS is eager to continue with its automation program. However, we believe its current contractual arrangements with EDS and IBM do not serve the best interests of INS, the government as a whole, or the taxpayer. Irregularities in the competition, award, and administration of INS' hardware contract have resulted in its acquiring computing capability at excessive prices, without having clearly demonstrated needs. Continuing the current pricing structure will dramatically inflate the government's costs over the 8-year life of this contract.

Background

INS has been working since 1977 to automate its mission and administrative systems. Lack of planning and a definitive needs assessment hampered INS' early efforts. Congressional criticism of these early efforts resulted in a comprehensive planning effort and, in 1981, publication of an agencywide long-range ADP plan. This plan is the foundation of INS' hardware and software development efforts over the past 5 years. Initial efforts at implementation moved slowly; to gain ground more rapidly INS, in 1983, departed from the plan's original outline and began accelerating systems acquisition.

Inadequate Planning Slowed Early Automation Efforts

The agency first tried to automate its district-office casework in 1977 by establishing a prototype, automated district office in Houston, Texas. INS hoped that success in developing, testing, and evaluating a model office would provide a basis for expanding automation to other district offices. However, hardware acquisition based on this project was cut short by congressional action in 1979. At that time the General Accounting Office testified before the House Committee on Government Operations[3] that INS had not (1) adequately identified its automation requirements, (2) complied with federal procurement regulations in acquiring ADP equipment, or (3) developed either a mission statement or a long-range ADP

[3]"Immigration & Naturalization Service Proposed Procurement of Automated Data Processing Equipment to Streamline and Update Office Procedures," Statement by Walter L. Anderson, July 23, 1979.

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plan that would support mission requirements. Because INS had not properly planned or adequately analyzed its data processing needs, the Congress mandated that INS develop the statement and plan before proceeding with its ADP acquisitions. INS published the mission statement and goals in September 1980. Over the next year the agency developed and published a long-range ADP plan designed to meet these mission goals. The September 1981 plan listed the functions INS managers wanted to automate and presented a general strategy for doing so.

INS originally planned to pursue its ADP goals through a major acquisition procurement approach, as defined by Office of Management and Budget Circular A-109. This approach, if pursued, would have involved evaluation of vendor proposals for complete, integrated hardware and applications software solutions to INS' mission needs; a competitive demonstration among the best qualified proposals; and, ultimately, an award for full-scale system production.

Changes in Procurement Approach Made to Expedite Automation

INS documents reflect management's perception that the ADP program, following the A-109 approach, had progressed, but too slowly for INS management. Between September 1981 and February 1983, the program stayed at the "drawing board" stage and had no definite implementation schedule. Impatient with the acquisition pace, INS management charged its new Associate Commissioner for Information Systems with acquiring a state-of-the-art ADP system in the shortest time possible. This charge resulted in a strategy to split INS' computing needs into three related but distinctly separate efforts. In adopting this and abandoning the A-109 approach, INS

- entered into an agreement with the Department of Justice to establish a Dallas, Texas, data center, initially dedicated to INS processing, where INS' major applications would reside;
- awarded a requirements-type contract for applications software development; and
- issued a separate solicitation for hardware to increase access to applications and to enable district offices to automate their casework.

This report focuses on the acquisition of computer hardware by INS to support its district offices.

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Dallas Data Center Enhanced INS Processing Capabilities in Early 1984

The Department of Justice and INS formally agreed in October 1983 to establish a Justice Data Center (in Dallas) to meet increased demand for data processing capacity, principally on INS' behalf. The facility was to be operational by March 1984, in time to support INS requirements to process foreign tourists attending the Summer Olympic Games. INS and Justice considered the data center the most cost-effective alternative to the construction and operation of at least nine smaller INS data processing sites, a proposal also under consideration within INS at that time. The data center became operational on April 16, 1984, at a cost to INS of $8.5 million over a 2-year period for development and operation.

Separate Hardware Acquisition Begun

INS envisioned its major applications residing on Justice computers in Washington, D.C., and Dallas but sought terminals, processors, and communications hardware to automate its district offices and increase access to its data. Consequently, in October 1983, INS issued a hardware Request for Proposals (RFP), seeking a detailed hardware systems design. This first draft elicited negative responses from the computer industry. Four potential offerors formally complained that requirements, such as machine code compatibility, precluded all vendors except IBM or those offering IBM-plug-compatible equipment from consideration. INS withdrew the RFP, sought an outside contractor to change it, and issued a second draft for comment in December 1983. Industry response was again negative and for the same reason. After additional review of industry comments and amendments, INS issued a final RFP on January 25, 1984.

The final RFP resulted in no responses from non-IBM vendors and only two offers: one from IBM for its own hardware and one from EDS with predominantly IBM hardware. INS evaluated both proposals as technically acceptable. Negotiations with both vendors resulted in best and final offers, tendered in April 1984. On May 22, 1984, INS awarded a contract to IBM and two subcontractors for hardware, systems software, site preparation, and systems integration and operations.

INS Violated and Departed From Federal Procurement Regulations

In evaluating the proposals of the two final offerors and ultimately awarding the contract to IBM, INS violated federal procurement regulations and departed from accepted practices. On June 5, 1984, shortly after the contract's award, EDS, the unsuccessful bidder, filed a bid protest with the General Accounting Office and a civil suit in U.S. District Court seeking to overturn the award. EDS alleged that there had been a number of improprieties in INS' negotiation and award of the contract,

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and that INS had given IBM preferential treatment and had violated federal procurement laws and regulations. Specifically, EDS asserted that

- in a closed-door, after-hours meeting that excluded all INS' contracting office staff, INS technical representatives improperly and unlawfully engaged in discussions with IBM after submission of best and final offers;[4]
- INS did not follow the evaluation criteria set forth in the RFP;
- IBM's best and final offer did not meet material requirements in the RFP;
- INS made substantial errors in its technical and cost evaluation of the proposals;
- INS did not treat the offerors equally and, as a result, the offerors did not compete on a common basis; and
- INS exceeded the terms of its DPA.

After the civil suit and protest were filed INS accelerated performance under the contract by attempting to take early delivery on equipment from IBM. In response, EDS requested and, on July 6, 1984, obtained an injunction against INS, effectively freezing the contract until the protest and civil suit could be resolved. In granting the injunction, the court found that EDS had raised substantial legal questions and agreed to halt contract performance until they could be resolved. On January 10, 1985, INS, EDS, IBM, Planning Research Corporation, and Informatics General Corporation (both IBM subcontractors) negotiated a settlement resulting in EDS' takeover of much of the IBM contract.

Because EDS withdrew its protest after the settlement we did not formally rule on the EDS issues. However, in evaluating INS' procurement actions we, of necessity, examined the records and found that at least four of EDS' assertions were accurate and are pertinent in that changes resulting from the settlement of these issues have molded the present shape of the contract. We found that INS had, in fact, departed from accepted procurement practices during competition and award of its hardware contract. The agency

- negotiated with one offeror and changed proposals after best and final offers;
- gave unequal treatment to offerors relating to the RFP requirement for centralized processing;
- evaluated IBM's Alternate Purchase Plan as a lease-with-option-to-purchase plan; and

[4]A best and final offer is the final proposal submitted at the close of negotiations.

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- exceeded the value and scope of the DPA.

In its comments to our September 6, 1985, briefing, INS stated that since EDS voluntarily relinquished these points in accepting the settlement to its civil suit, these issues were no longer relevant. We disagree: INS' conduct of its procurement caused the protest and litigation. We believe it is important to understand these causes to know why the contract exists in its current form. Discussion on each of these issues follows.

A Meeting After Negotiations Closed Compromised the Procurement Process

On May 10, 1984, 23 days after the formal close of negotiations and the receipt and evaluation of best and final offers, INS' Source Evaluation Panel conducted a closed-door, late-night meeting with IBM representatives. During this pre-award meeting, INS, with IBM's guidance, modified IBM's best and final offer by deleting 4,000 terminals from the offer and reconfiguring the systems. IBM's offered purchase price was reduced from $61.6 million to $58,316,085. This reduced price was only $2,713 lower than EDS' comparable offered price of $58,318,798. Although the meeting constituted additional negotiations, INS did not offer EDS an opportunity to negotiate. These actions by INS violated federal procurement regulations.

Then and now, federal procurement regulations[5] provide that negotiations shall be closed on a specified date and that no modifications shall occur after submission of best and final offers, unless all offerors are provided an opportunity to negotiate equally. We have determined[6] that holding a "clarifications" meeting that results in substantive revisions to a proposal and requesting "clarifications" that are essential for determining the acceptability of a proposal constitutes negotiations. As the court observed in issuing the injunction, we have consistently held that holding negotiations with one offeror and excluding others treats offerors unequally and compromises the integrity of the procurement process, whether or not the impact of the negotiations is itself prejudicial.

In commenting on this issue in response to our briefing document, INS maintained that the meeting was merely to clear up a "bid mistake,"

[5]Federal Procurement Regulation, 41 C.F.R. § 1-3.805-1(b) (1984) and FIRMR § 201-30.007 (Temp. Reg. 8).

[6]See, e.g., New Hampshire-Vermont Health Services, 57 Comp. Gen. 347 (1978), at 353 78-1 C.P.D ¶ 202.

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that it had no material effect on the IBM proposal, and that our discussion of the issue served no purpose. We disagree on all points. In granting the injunction against INS, the judge ruled that "...the Court must consider the actions of those involved, not the characterization of the meeting by INS personnel." In reviewing the evidence, the judge found that the meeting did result in a substantial modification of IBM's proposal by INS and that EDS was not treated equally. In fact, this incident and the court's decision to enjoin contract performance, more than any other factors, resulted in the settlement that created the current contract with EDS. Accordingly, we believe a discussion of these facts is particularly pertinent to understanding why INS entered into its current agreements with EDS and IBM.

INS Applied Technical Criteria Inconsistently

INS did not evaluate the two final offers on the same basis. INS granted IBM extra points in its proposal evaluation for offering a decentralized architecture that would process numerous applications at remote locations. However, INS gave EDS a lower score for proposing the centralized processing solution, required by the RFP. This resulted because INS deviated from the RFP's requirements without (1) amending the solicitation, (2) informing EDS of the revision, or (3) giving EDS an opportunity to submit a revised proposal.

The RFP required an office automation system and a computer system capable of processing, among other software, an application program called the Alien File Accountability System. The RFP expressly stated that only this application system was to be processed on the solicited remote INS computers; all other applications would be processed using the central processing units at the Justice data centers. When EDS asked for clarification INS officials re-emphasized this point. However, in the evaluation process INS effectively downgraded EDS' proposal for not offering the decentralized processing capability for several application systems. INS' Source Evaluation Panel's final report showed that EDS received only about a third of the possible score for "Knowledge of INS Requirements." The report comments negatively that much of the text of the EDS proposal was characterized by "playback" of the RFP and that the panel was concerned about EDS' configuration flexibility.

In contrast, IBM received the maximum possible points from three of the four panel members for "Knowledge of INS Requirements." The panel's narrative comments gave IBM credit for suggesting "alternative methods and approaches" and for making "a case" for decentralizing the centralized programs. By deviating from the RFP requirements and agreeing to

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the superiority of decentralizing additional applications, INS improperly influenced the technical evaluation in favor of IBM's proposal. If INS wanted to consider a decentralized approach, it should have amended the RFP and allowed EDS as well as IBM to submit an offer on that basis.

INS Did Not Evaluate Payment Plans Equally

INS did not equitably evaluate the terms of payment proposed by EDS and IBM. The RFP asked offerors to propose a variety of lease plans as alternatives to a purchase price. EDS offered three lease plans; IBM offered only one, an installment purchase contract called the Alternate Purchase Plan. INS compared all of EDS' options to IBM's single proposal, a comparison of different—therefore incomparable—terms and obligations. Hence, the selection was based on an improper cost comparison.

EDS' proposed alternatives included (1) straight lease, (2) lease to ownership, and (3) lease with option to purchase. A lease-to-ownership plan is one that results in ownership after a specified number of payments, with responsibility of ownership transferring to the government at a determined time. The lease-with-option-to-purchase plan allows the lessee the option to purchase the equipment at intervals in the lease period. Responsibilities of ownership lie with the lessor until, and only if, the government decides to exercise its option to purchase the equipment.

In its best and final offer IBM described its single alternative as an acquisition plan based on the purchase of the system or machine, readily recognizable as an installment purchase plan (purchase with a fixed number of monthly payments). IBM asserted that the plan resembled both a lease-to-ownership and a lease-with-option-to-purchase plan and could be evaluated as either one. However, IBM's plan differs from a lease with option to purchase in that rights and obligations conveyed to the government differ in scope and cost. Under a lease-with-option-to-purchase plan, no explicit agreement for the government to purchase exists, only the option to do so.

Nonetheless, INS evaluated IBM's $61,277,049 Alternate Purchase Plan price as an installment purchase plan (also known as a lease-to-ownership plan), a lease with option to purchase, and a straight lease. The comparisons shown in table I.1 resulted.

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Table I.1: Life Cycle Cost Comparisons

	IBM	EDS	Difference
Purchase	$58,316,085	$58,318,798	$2,713
LTOP[a]	61,277,049	59,467,857	(1,809,192)
LWOP[b]	61,277,049	70,491,613	9,214,564
Lease	61,277,049	95,452,630	34,175,581

[a]Lease-to-ownership plan

[b]Lease-with-option-to-purchase plan

Note: IBM's Alternate Purchase Plan costs were evaluated as LTOP, LWOP, and Lease although it is technically most comparable to LTOP.

The INS evaluation team stated that even though an outright purchase would have been the most economical for INS, funding limitations restricted the agency from so choosing. INS reported that purchase funds were not then available or soon expected to be. Although IBM's Alternate Purchase Plan provided for unencumbered title to pass to the government at a determined time (as with a lease-to-ownership plan), the evaluation team chose to evaluate cost as if it were a lease with option to purchase and to base the award on that comparison.

Although INS evaluated the offers and selected the winning offeror on the basis of a lease-with-option-to-purchase comparison, INS actually awarded the contract to IBM as an "installment purchase" or lease to ownership. Had the comparison been based on comparable terms, conditions, and obligations, IBM's Alternate Purchase Plan would have been evaluated against EDS' lease-to-ownership plan, at $1,809,192 less.

INS Violated Terms of Its DPA

INS violated the conditions of the DPA granted by GSA. The DPA requires that amendments be requested whenever a material change is expected in the basis on which the DPA was granted. By allowing the contract to exceed the DPA-authorized amount by at least $11 million, by significantly altering the system architecture, and by acquiring processing capability in excess of that originally requested, without obtaining an amendment, INS has violated the terms of its DPA.[7]

The December 23, 1983, DPA was based on information contained in INS' Agency Procurement Request. The request showed that INS (1) intended to acquire systems to support a centralized approach; in this case, the systems would run some applications locally and would be used to access data from Department of Justice data centers (where most of INS'

[7]FPR, 41 C.F.R. § 1-4.1107; also FPR, 41 C.F.R. § 1-4.1108(c) (1984).

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applications would be run) and (2) required that the systems be upgradable to support twice their initial capacity. In addition, the DPA required INS to obtain an amendment to the Agency Procurement Request whenever "material" (substantive) revisions to the technical requirements or increases in anticipated costs were expected.

The DPA granted INS authority to spend no more than approximately $64,425,000 over an 8-year contract life. The original contract awarded to IBM had an evaluated purchase price of $58,316,085, which was within this ceiling. However, within days of the award, INS instituted contract changes that escalated the estimated cost to $75,462,593 (more than $11 million over its authority) by the time it was assumed by EDS. Estimates of total contract value now exceed $100 million, but INS has not sought to modify its DPA.

In the RFP, INS stated that the equipment offered must be upgradable during the system's life to process twice the peak work load indicated by work load statistics INS provided. In response, IBM proposed configurations using model 4341-L09 computers. On May 31, 1984, 9 days after the contract was awarded, IBM offered and INS subsequently accepted (on June 15, 1984), model 4381-P1 computers as an upgrade to the awarded systems. The relative performance rating of the 4381 is more than four times that of the 4341; its cost is four times as great.

As noted above, the Agency Procurement Request stated that INS intended to acquire systems to support a centralized approach. However, in evaluating the proposals and awarding the contract, INS favored and ultimately accepted the decentralized system approach proposed by IBM. The DPA requires that an amendment be requested and granted whenever a material change in the original requirements occurs. GSA officials responsible for granting the DPA stated that acquiring processing capability in excess of that stated in the DPA constituted a significant change from the basis on which the DPA was granted. Notwithstanding the requirement, INS (after the contract was awarded) increased system performance beyond the needs identified in the Agency Procurement Request; increased the anticipated costs of the contract significantly beyond what was identified in the request; and substantially changed the architecture of INS' systems, without notifying GSA of the change or seeking an amended DPA.

Commenting on our September 6, 1985, briefing document, INS defended its systems upgrade as an efficiency measure and presented a cost comparison showing the economy attributable to reducing the number of

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processing centers to five because of the upgrade. INS had not performed the comparison presented to us in its comments before accepting the change to 4381 processors but, rather, only after we surfaced the issue. Further, we disagree with INS' assertion at the time that it intended to reduce the number of sites to five: its official documentation,[8] published almost a year later, still maintained the agency's intent to install eight processing centers.

INS has not addressed the significant issue we raise—violation of the DPA. The DPA is the mechanism used by GSA to exercise its oversight role under federal procurement statutes. INS changed the size, number, and configuration of its awarded systems. These changes, by INS' own calculations, caused the total contract to exceed the DPA by more than $11 million before the contract was ever assumed by EDS. Any of these changes should have triggered a request to amend the DPA, but INS did not do so, thereby violating the terms of its DPA.

In addition, INS' action to upgrade the 4341s to the much larger 4381s so soon after contract award constitutes another example in which INS compromised the integrity of the procurement process. Even though INS has never asserted any change in its requirements that would have necessitated increased computing power, it specifically asked both vendors during negotiations to comment on how they would upgrade their proposed systems to 4381s. The 4341s were never installed; the 4381s were substituted less than a month after contract award. Consequently, we believe it was INS' intent, before award of the contract, to make this substitution.

The integrity of the procurement system precludes any agency from awarding a contract competed under given requirements with the intent of increasing those requirements immediately or soon after award. This is because the contractor would be awarded the new requirements on essentially a sole-source basis, thus circumventing the competitive procurement statutes.[9]

[8]The 1985 Status of INS' Long Range ADP Plans and responses submitted for the record to questions by the Senate Appropriations Committee during hearings, April 17, 1985.

[9]See, e.g., Dyneteria, Inc., B-211525.2, Oct. 31, 1984, 84-2 C.P.D. ¶ 484.

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INS Accelerated Delivery Dates to Circumvent the Bid Protest and Civil Actions

In an attempt to maintain the momentum of its procurement, INS moved up the delivery dates in its contract with IBM after the bid protest and civil suit were filed on June 5, 1984. In granting the injunction to enjoin performance on July 6, 1984, the Court observed that contracts are rarely set aside once performance is under way and that INS did not attempt to accelerate delivery until after the protest was filed. In the effort to speed up its equipment delivery, INS obtained earlier delivery dates and a preferential delivery position over other IBM customers via a "rated order" under the Defense Production Act.

Title I of the Defense Production Act of 1950[10] authorizes the President to require priority performance of those contracts or orders necessary to promote national defense—a rated order—over other contracts or orders. A rated order requires a contractor to give that order preferential treatment. The act has prohibitions, however, against using rated orders to simply obtain an earlier delivery date.

INS requested, on July 3, 1984, that the Department of Commerce grant a rated order. INS stated that it was imperative to have its computer equipment immediately so it could be operational for the Olympics and major political conventions. This was the same justification used earlier by INS and Justice in authorizing the data center in Dallas. With a rated order INS said it could get the hardware delivered by July 15, 1984; otherwise IBM could not deliver before fall. In our opinion, INS misused the rated order to gain delivery earlier than necessary.

The events and dates in 1984 that INS cited as compelling are the: Democratic Convention, July 16-19; Summer Olympic Games, July 28-August 12; and Republican Convention, August 20-23. The standard acceptance and test period for new computer hardware is 30 days. We do not believe INS could have effectively installed and used equipment received on July 15, 1984, to support these events. Furthermore, site preparation work, which included designing and constructing a new building in Chula Vista, California, to house some of the computer equipment, began on June 19, 1984. Completion was not scheduled until at least March 19, 1985, nearly 8 months after the delivery dates anticipated in the rated order. This fact alone indicates that some of the equipment could not have been used under the original delivery schedule, much less INS' accelerated schedule.

[10]50 U.S.C. App. § 2061, et seq. (1982).

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On July 6, 1984, the day the injunction freezing the contract was issued, INS informed the Federal Emergency Management Agency (FEMA certifies to Commerce that rated orders are necessary to the national security) that any delay in obtaining the hardware would preclude INS from having timely information on persons posing a threat to participants in the Summer Olympics and political conventions. INS also cited the need to support other INS systems containing information on persons posing a threat to military, national defense, and atomic energy facilities. FEMA approved a rated order within 3 days of INS' original request.

Despite the injunction, INS continued to pursue a Defense Production Act priority. INS also obtained certification from the Department of Defense that its procurement was integral to the national defense. Defense gave its certification based on an oral request from FEMA, with no documentation submitted for review.

Finally, on July 20, 1984, with the Democratic Convention over, the Olympics a week away, and an injunction in force, INS obtained its final rated order from Commerce. The final rating limited the priority treatment to specific items in the contract.

Table I.2: Equipment

	Total contracted	Approved for rated order
4381s	8	4
System 36s	70	9
Terminals	8,500	613

However, INS subsequently applied the rated order to the entire contract with IBM (and later EDS), indicating no limitations on items for priority delivery. Furthermore, EDS has informed us that it has employed the rated order to obtain preferential delivery positions from IBM although events used to justify the order have long passed. According to Commerce's Compliance Officer, who is charged with monitoring the Defense Production Act, using a rated order for an entire order and after the events for which it was requested constitute misuse. The Compliance Officer informed us that Commerce was not told of either the injunction or the continued use of the rated order.

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INS Avoided Continued Litigation and Negotiated a Settlement

To avoid protracted litigation and a possible adverse ruling on the bid protest, INS negotiated a settlement with EDS and IBM (including its subcontractors). INS believed the injunction interfered with implementation of its automation plans and that its best interests lay in resolving that dispute rapidly. Consequently, INS negotiated an agreeable-to-all-parties division of the original contract.

By this agreement EDS became the prime contractor responsible for performing the IBM proposal. To accomplish this, EDS subcontracted with IBM to supply the hardware and system software. This prime contract, as assumed by EDS, forms the basis for all of INS' procurement actions; contract modifications occurring after the settlement have changed how prices under the contract are determined.

INS Did Not Comply With the Financial Integrity Act

The act, which became law in 1982, requires, in part, that executive agencies evaluate their internal accounting systems and administrative controls for compliance with the Comptroller General's internal control standards.[11] Agencies must provide reasonable assurance that (1) obligations and costs comply with applicable law; (2) funds, property, and assets are safeguarded; and (3) revenues and expenditures are properly accounted for. Agency heads must report the results of their evaluations to the President and the Congress, identifying where the systems do not comply and delineating plans and schedules for corrective action.

Consistent with the act's evaluation requirements, INS assessed the internal controls for its ADP procurement function in 1983. INS concluded that the controls at that time were highly susceptible to fraud, waste, and abuse. However, the Commissioner's 1984 letter to the Attorney General, required annually by the act, assured that INS' controls were adequate.

In our view, the irregularities in INS' contract award were caused in large part by failure to follow established procurement policies and procedures—a clear breakdown in internal controls. Although this situation and our concern were fully known to INS officials in September 1985, procurement controls also were not included as a weakness in the Commissioner's 1985 assurance letter to the Attorney General.

[11] 31 U.S.C. § 3512 (1982).

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Given the significance of the total computer acquisition cost—currently estimated at over $100 million—we believe INS' continuation of a contract originally awarded in violation of federal procurement regulations is a material control weakness under the Federal Managers' Financial Integrity Act.

INS' Negotiated Hardware Prices Are Excessive

The settlement INS negotiated to extricate itself from litigation set the stage for agreements that substantially increased the cost of its hardware. INS modified the EDS contract on January 29, 1985, only days after the federal judge assigned the original IBM contract with specific assurances from INS that the contract costs were the same. In executing the modification, INS agreed to pay EDS an add-on percentage, as high as 28.8 percent, to IBM's equipment prices. The cost of equipment actually delivered and on order under this arrangement has exceeded published IBM list prices by 9 to 25 percent. This overpricing is exacerbated when coupled with these facts: (1) competition generally yields prices that are 30 percent below GSA schedule and (2) prices that are 20 to 50 percent below IBM list are available. These facts suggest that the hardware prices alone exceed reasonable expectations by $16-32 million over the 8-year life of the contract.

INS Acceded to Prices Above GSA Schedule

INS' post-settlement contract modifications and price changes will ultimately increase the overall cost of its hardware. Changes to the original contract with IBM caused an escalation from $58,316,085 to $75,462,593 before the contract was assumed by EDS in January 1985. The current contract between EDS and INS neither totally lists nor prices all the hardware INS has said it intends to acquire. However, the listed equipment has a net purchase price of over $59 million as the contract is presently constructed, well above the $56-million level authorized for hardware by the DPA. Further, EDS informed the Senate Appropriations Committee on November 12, 1985, that it believes the value of the entire contract to have grown to over $100 million, also well above the $64 million authorized by the DPA for the total contract.

INS awarded IBM a contract based on GSA-schedule prices; the equipment listed within the contract was configured in specific groupings or site configurations. To the extent that INS did not alter the original configurations, IBM offered configuration discounts averaging approximately 14 percent from its GSA-schedule unit prices. However, the first modification to the IBM contract changed both the configurations and delivery

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schedules, setting aside the discounts and effectively obligating INS to pay GSA-schedule prices.

The contract between EDS and INS also uses GSA-schedule unit prices as a reference point. INS' changes and EDS' pricing methodology (with INS' consent) have combined to achieve prices that in all instances exceed those in the GSA schedule. With the GSA schedule as a point of reference, IBM negotiates a base price with EDS; then EDS, as the prime contractor, is allowed to add a "load" to IBM's prices. The load represents EDS' overhead, cost of capital, and profit. At the contract's outset the load was 23.4 percent, but it rose to 28.8 percent as EDS' overhead rate increased.

The discounts by IBM to EDS provided for in the settlement can reduce the base price of equipment. However, these discounts are diminished if modifications are made to the originally assigned contract. To date, discounts have diminished in this manner. Also, all future lots of equipment will be subject to repricing when ordered because of changes already made to the contract. Consequently, IBM's discounts will be reduced, and EDS' load will be added to each future equipment configuration.

INS installed its first equipment lot under lease-to-ownership provisions in summer 1985 but then decided to buy most of it because of unused, end-of-fiscal-year funds. Under EDS' pricing arrangement, INS' cost (for the partial buy-out and continued lease of the first lot) exceeded then-current GSA-schedule prices by approximately 25 percent. After we questioned the prices, INS asked EDS for discount concessions that ultimately reduced the total price to about 19 percent above GSA schedule.

Table I.3: Comparison of Prices for Lot 1

	Original EDS figure	GSA schedule	Amount paid to EDS
Comparison of Prices for Lot 1	$5.5 million	$4.5 million	$5.3 million

EDS negotiated its profit from 15 percent to 8.2 percent on a second lot, further decreasing INS' cost—but only to 9 percent above GSA-schedule prices.

Prices Lower Than GSA Schedule and IBM List Are Available

INS' payment of higher-than-list prices contrasts sharply with both commercial and federal practices. A leading computer trade journal has reported that both IBM commercial and federal customers have enjoyed significant discounts from IBM's published prices for several years. The

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discounts have ranged from 20 to 50 percent on some of the same equipment INS is acquiring. Furthermore, GSA states and previous testimony by House investigators to the House Appropriations Committee confirms that, generally in competitive ADP procurements, equipment prices average 30 percent below GSA-schedule prices and that the GSA schedule is generally considered to be a ceiling price for hardware acquisitions.

INS, in its comments to our briefing document, maintains that its current costs for computer hardware are comparable to those it would have incurred under the original IBM contract. INS further maintains that these costs are fair and reasonable. We disagree. The facts discussed above are clear on two points: (1) INS has actually paid prices higher than the GSA schedule, therefore exceeding the maximum price listed under the original contract, and (2) INS could reasonably be expected to obtain substantially better prices for the same equipment, given commercial and federal experiences.

We agree with INS' comment that we should consider overall costs of the contract, including maintenance and services, in arriving at a decision on the reasonableness of price. We considered this argument and found that the overall contract has

- systems software that, like hardware, is priced at GSA-schedule rates and is subject to the same 28.8 percent load by EDS;
- maintenance that is priced at current GSA-schedule prices and is also subject to the EDS load; even considering fixed-rate, price-protection provisions recently negotiated by INS, maintenance is not priced appreciably better than in the original IBM contract over the total contract life; and
- personnel costs that, like hardware and software, are subject to EDS' load and are, therefore, higher than they might otherwise be.

What results is a contract in which all prices within the contract are loaded as are the hardware prices; excessive hardware prices are neither offset nor obviated.

In its comments to our briefing document, INS did not address the most important fact in the cost issue—simply, that the total contract, as a result of the changes made to it, costs more today than it did when it was awarded or assigned to EDS.

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INS' Hardware Acquisition Is Not Based on a Clear Statement of Needs

INS initially documented the functions it wanted to automate in its 1981 long-range plan and based its 1983 Agency Procurement Request on this plan and several assumptions. Key assumptions were that

- all major applications would be processed using the computer resources at the Justice data centers;
- INS would depend on the vendor community to define its hardware architecture through responses to the hardware RFP; and
- all telecommunications support would be provided by Justice through a consolidated, Justice-wide network.

Each of the above has become invalid since the request was prepared. But INS has not reassessed its requirements and has not prepared the detailed analysis required by procurement regulations as a basis for its acquisition strategy.

Federal regulations require that ADP acquisitions and changes to the basis of an Agency Procurement Request be supported by analyses[12] to ensure that ADP needs are met as economically and efficiently as possible. The request assumed centralized applications processing using existing Justice computers. However, INS is acquiring remote computers with considerable processing power on which to process some of its major applications. Neither IBM's nor EDS' hardware solutions, described in their responses to INS' RFP, has been implemented: INS has changed the number, configuration, location, and capacity of its regional data centers from the original contract award. Finally, the telecommunications support envisioned under the request has not materialized. Funding was cancelled for Justice's consolidation project in fiscal year 1985, and INS is relying on its own, contracted telecommunications resources to support its needs.

Any of these changes should have triggered a validation by INS of its requirements before proceeding with hardware acquisitions. Nonetheless, INS has moved ahead with its acquisitions without a requirements study in the belief that its 1981 plan adequately serves this purpose. However, various INS operating documents conflict on how many processing centers INS requires, how these centers will be configured, and how critical mission systems will be processed. The May 1985 update to INS' long-range plan anticipates as many as 10 centers. Responses to questions submitted by the Senate Appropriations Committee in April 1985 state that eight centers will be installed. Internal

[12]FIRMR § 201-30.007 (Temp. Reg. 8).

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documents prepared to justify the 4381 upgrade now assert that five centers are planned. Similar confusion exists over how INS will process its critical applications. The number and identity of applications that INS intends to process at remote centers versus the Justice data centers varies widely within various INS planning documents.

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Objectives, Scope, and Methodology

We began an evaluation to assess the management of INS' data processing resources in March 1985. Because of both the size and importance of the INS hardware procurement, we elected to review this acquisition in detail. Our preliminary evaluation work led us to review matters related to three broad issues:

- The award and administration of INS' hardware contract.
- The contract's cost to INS.
- The justification, or needs statement, supporting the acquisition.

We conducted our work between March and November 1985 primarily at INS headquarters in Washington, D.C. We met several times with the Associate Commissioner for Information Systems and his cognizant staff. We also interviewed members of the INS Contracting and Procurement Branch, specifically the branch chief, deputy branch chief, the contracting officer, and the alternate responsible for the "Acquisition II" procurement. We reviewed documents on the planning, management, and operation of the INS computer program. We reviewed the available contract files pertaining to this acquisition, including internal memoranda, status reports, task orders, cost/benefit analyses, evaluation reports, payment terms, conditions, and pricing methodologies. We also examined documents relating to INS' Budget Execution Plan. In doing so, we held meetings with INS' Comptroller and members of his staff.

To understand EDS' terms, conditions, and prices, we interviewed its contract administrator and other EDS officials responsible for negotiating and performing the contract.

In addition, we selected and interviewed responsible officials of the following offices and agencies who either advised INS, reviewed the litigation settlement, or were involved in acquisition decisions.

- General Services Administration
- Office of Management and Budget
- Department of Commerce
- Federal Emergency Management Agency
- Department of Defense

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- Department of Justice
  - Civil Litigation Division
  - Justice Management Division
    Office of Information Technology
    Computer Technology and Telecommunications Staff
    Systems Policy Staff
    Office of the Procurement Executive
    Executive Office for U.S. Attorneys
    Office of Legal Services

And we reviewed files and documents related to the hardware procurement at GSA, Commerce, and Justice.

To observe progress in installing the first data center utilizing equipment from the hardware procurement, we visited INS' San Diego, California, facility and reviewed construction progress and plans. We also visited and observed operations at the Justice Data Center in Dallas, Texas.

We performed our work in accordance with generally accepted government auditing standards. On September 25, 1985, we briefed the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Senate Committee on Appropriations, on our findings.[13] On November 14, 1985, the Commissioner provided us written comments on our briefing document. We have incorporated these comments, where appropriate, in appendix I. However, at the request of the addressees, we did not provide a copy of this report to INS for comment.

[13]We subsequently provided the same briefing to staff from the Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, House Committee on Appropriations (10/4/85); House Committee on Government Operations (10/8/85); and Congressman John Bryant (11/14/85).

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